

STATE OF NEW YORK

5984

2023-2024 Regular Sessions

IN SENATE

March 24, 2023

Introduced by Sen. KAVANAGH -- read twice and ordered printed, and when printed to be committed to the Committee on Elections

AN ACT to amend the election law, in relation to registration of voters during early voting

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subparagraph (ii) of paragraph (e) of subdivision 3 of
2 section 8-302 of the election law, as amended by section 8 of part XX of
3 chapter 55 of the laws of 2019, is amended to read as follows:

4 (ii) He or she may swear to and subscribe an affidavit stating that he
5 or she has duly registered to vote, the address in such election
6 district from which he or she registered, that he or she remains a duly
7 qualified voter in such election district, that his or her registration
8 poll record appears to be lost or misplaced or that his or her name
9 and/or his or her signature was omitted from the computer generated
10 registration list or such record indicates the voter already voted when
11 he or she did not do so or that he or she has moved within New York
12 state since he or she last registered, the address from which he or she
13 was previously registered and the address at which he or she currently
14 resides, and at a primary election, the party in which he or she is
15 enrolled, or that they are eligible for conditional voter registration
16 pursuant to section 8-604 of this article. The inspectors of election
17 shall offer such an affidavit to each such voter whose residence address
18 is in such election district. Each such affidavit shall be in a form
19 prescribed by the state board of elections, shall be printed on an
20 envelope of the size and quality used for an absentee ballot envelope,
21 and shall contain an acknowledgment that the affiant understands that
22 any false statement made therein is perjury punishable according to law.
23 Such form prescribed by the state board of elections shall request
24 information required to register such voter should the county board
25 determine that such voter is not yet registered and shall constitute an

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 application to register to vote. The voter's name and the entries
2 required shall then be entered without delay and without further inquiry
3 in the fourth section of the challenge report or in the place provided
4 in the computer generated registration list, with the notation that the
5 voter has executed the affidavit hereinabove prescribed, or, if such
6 person's name appears in such registration list, the board of elections
7 may provide a place to make such entry next to his or her name in such
8 list. The voter shall then, without further inquiry, be permitted to
9 vote an affidavit ballot provided for by this chapter. Such ballot shall
10 thereupon be placed in the envelope containing his or her affidavit, and
11 the envelope sealed and returned to the board of elections in the manner
12 provided by this chapter for protested official ballots, including a
13 statement of the number of such ballots. The election inspector or poll
14 clerk shall ensure that the voter seals the envelope and if the voter
15 does not seal the envelope shall immediately seal the envelope upon
16 receipt from the voter. If a voter registration application for a
17 person who casts an affidavit ballot pursuant to this subparagraph was
18 received by a board of elections by the tenth day prior to the election,
19 the board shall cast and count an affidavit ballot from such person, if
20 otherwise valid, notwithstanding the fact that the person's name was
21 omitted from a registration poll record or list of registered voters.

22 § 2. The election law is amended by adding a new section 8-604 to read
23 as follows:

24 § 8-604. Registration during early voting. 1. In addition to other
25 methods of voter registration provided under this chapter, a person who
26 is not registered to vote in the state but is otherwise qualified to
27 register to vote and to cast a ballot may register to vote and enroll in
28 a political party at an early voting polling location as provided in
29 this section during any day of early voting that occurs on or before the
30 tenth day prior to an election.

31 2. (a) A qualified person who is not registered to vote in the state
32 who appears at an early voting polling place during any day of early
33 voting that occurs on or before the tenth day prior to an election shall
34 be offered the opportunity to complete a conditional voter registration.

35 (b) "Conditional voter registration" means a properly executed affida-
36 vit in the form described in subparagraph (ii) of paragraph (e) of
37 subdivision three of section 8-302 of this article at an early voting
38 polling place and which may be deemed effective after the board of
39 elections processes the affidavit.

40 3. If a conditional registration is deemed effective, the board of
41 elections shall add the person's voter registration information to the
42 statewide electronic voter file and include the corresponding ballot in
43 the official canvass, if otherwise valid.

44 4. The board of elections shall conduct the receipt and handling of
45 each conditional voter registration and corresponding ballot in a manner
46 that protects the secrecy of the ballot and allows the elections offi-
47 cial to process the registration and include the corresponding ballot in
48 the official canvass, if otherwise valid.

49 5. The board of elections shall advise a person completing a condi-
50 tional voter registration of the procedures for determining the validity
51 of a conditional voter registration and whether the person's ballot was
52 counted.

53 6. The state board of elections shall promulgate rules and regulations
54 to implement this section.

55 § 3. The opening paragraph of section 9-209 of the election law, as
56 added by chapter 763 of the laws of 2021, is amended to read as follows:

Before completing the canvass of votes cast in any primary, general, special, or other election at which voters are required to sign their registration poll records before voting, the board of elections shall proceed in the manner hereinafter prescribed to review, cast and canvass any absentee, military, special presidential, special federal or other special ballots and any ballots cast in affidavit envelopes, including ballots cast by voters filing a conditional voter registration pursuant to section 8-604 of this chapter. Each such ballot shall be retained in the original envelope containing the voter's affidavit and signature, in which it is delivered to the board of elections until such time as it is to be reviewed, in order to be cast and canvassed.

§ 4. Subdivision 7 of section 9-209 of the election law, as added by chapter 763 of the laws of 2021, paragraph (d) as amended by chapter 661 of the laws of 2022, is amended to read as follows:

7. Post-election review and canvassing of affidavit ballots. (a) Within four business days of the election, the board of elections shall review all affidavit ballots cast in the election. If the central board of canvassers determines that a person was entitled to vote at such election it shall cast and canvass such affidavit ballot; provided, however, if the board of elections receives one or more timely absentee ballots from a voter who also cast an affidavit ballot at a poll site, the last such timely absentee ballot received shall be canvassed and the affidavit ballot shall be set aside unopened; and provided further, if a voter was issued an absentee ballot and votes in person via an affidavit ballot and the board does not receive such absentee ballot, the affidavit ballot shall be canvassed if the voter is otherwise qualified to vote in such election.

(b) Affidavit ballots are valid when cast at a polling site permitted by law by qualified voters: (i) who moved within the state after registering; (ii) who are in inactive status; (iii) whose registration was incorrectly transferred to another address even though they did not move; (iv) whose registration poll records were missing on the day of such election; (v) who have not had their identity previously verified; (vi) whose registration poll records did not show them to be enrolled in the party in which they are enrolled; ~~and~~ (vii) who are incorrectly identified as having already voted; and (viii) who have submitted a valid conditional registration pursuant to section 8-604 of this chapter.

(c) Affidavit ballots are valid to the extent that ministerial error by the board of elections or any of its employees caused such ballot envelope not to be valid on its face.

(d) If the central board of canvassers determines that a person was entitled to vote at such election, the board shall cast and canvass such affidavit ballot if such board finds that the voter appeared at a polling place, in the correct county, which is designated as a polling place for the correct assembly district, regardless of the fact that the voter may have appeared in the incorrect election district or polling place, and regardless of whether the voter's name was in the registration poll record; provided, however, that in the event such ballot includes one or more offices for which such person is not entitled to vote at such election, such ballot shall only be cast and canvassed for the offices for which such person is entitled to vote at such election.

(e) If the central board of canvassers finds that a voter submitted a voter registration application through the electronic voter registration transmittal system pursuant to title eight of article five of this chapter and signed the affidavit ballot, the board shall cast and canvass

1 such affidavit ballot if the voter is otherwise qualified to vote in
2 such election.

3 (f) If the central board of canvassers determines that a person was
4 entitled to vote at such election, the board shall cast and canvass such
5 affidavit ballot if such board finds that the voter substantially
6 complied with the requirements of this chapter. For purposes of this
7 paragraph, "substantially complied" shall mean the board can determine
8 the voter's eligibility based on the statement of the affiant or records
9 of the board.

10 (g) If the central board of canvassers finds that the statewide voter
11 registration list supplies sufficient information to identify a voter,
12 failure by the voter to include on the affidavit ballot envelope the
13 address where such voter was previously registered shall not be a fatal
14 defect and the board shall cast and canvass such affidavit ballot.

15 (h) (i) If a voter registration application for a person was received
16 by a board of elections by the tenth day prior to the election, an affi-
17 davit ballot from the person shall be cast and counted if the voter is
18 otherwise qualified to vote in such election, notwithstanding the fact
19 that the person's name was omitted from a registration poll record or
20 list of registered voters.

21 (ii) If the central board of canvassers finds that the voter regis-
22 tered or pre-registered to vote for the first time pursuant to title
23 nine of article five of this chapter at least twenty-five days before a
24 primary, appeared at such primary election, and indicated on the affida-
25 vit ballot envelope the intent to enroll in such party, the affidavit
26 ballot shall be cast and canvassed if the voter is otherwise qualified
27 to vote in such election.

28 (i) A conditional voter registration submitted by a person registering
29 to vote at an early voting polling location on or before the tenth day
30 prior to an election pursuant to section 8-604 of this chapter shall be
31 processed and an affidavit ballot from such person shall be cast and
32 canvassed if the voter is otherwise qualified to vote in such election,
33 notwithstanding the fact that the person's name is not on a registration
34 poll record or list of registered voters.

35 (j) When the central board of canvassers determines that an affidavit
36 ballot is invalid due to a missing signature on the affidavit ballot
37 envelope, or because the signature on the affidavit ballot envelope does
38 not correspond to the registration signature, such ballots shall be
39 subject to the cure procedure in subdivision three of this section. The
40 absence of a signature on a registration poll record or computer gener-
41 ated list of registered voters shall not provide a basis for rejecting
42 conditional voter registrations and corresponding ballots submitted
43 pursuant to section 8-604 of this chapter.

44 [~~(j)~~] (k) At the meeting required pursuant to paragraph (a) of subdivi-
45 sion eight of this section, each candidate, political party, and inde-
46 pendent body shall be entitled to object to the board of elections'
47 determination that an affidavit ballot is invalid. Such ballots shall
48 not be counted absent an order of the court. In no event may a court
49 order a ballot that has been counted to be uncounted.

50 [~~(k)~~] (l) The board of elections shall enter information into the
51 ballot tracking system, as defined in section 8-414 of this chapter, to
52 allow a voter who cast a ballot in an affidavit envelope to determine if
53 the vote was counted.

54 § 5. This act shall take effect immediately.